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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,759	06/25/2003	Michael Rosenbauer	2000P13035WOUS	2143
46726	7590	11/17/2005	EXAMINER	
JOHN T. WINBURN 100 BOSCH BOULEVARD NEW BERN, NC 28562			TRAN, HANH VAN	
			ART UNIT	PAPER NUMBER
			3637	

DATE MAILED: 11/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/603,759

Applicant(s)

ROSENBAUER ET AL.

Examiner

Hanh V. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 6/25/03 & 8/22/05 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This is the Final Office Action from the examiner in charge of this application in response to applicant's amendment dated 8/22/2005.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the limitation in claim 21 of the cover part "attached externally" to said at least two upstanding corner stays of the base frame must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

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the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Priority

3. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Germany on 12/29/2000. It is noted, however, that applicant has not filed a certified copy of the German application as required by 35 U.S.C. 119(b). ***Claim***

Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 10-15, 18, 20-21, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Europe 556,787 to Premoli et al.

Premoli et al discloses a washing container for a dishwashing machine comprising all the elements recited in the above listed claims including, such as shown in Figs 7-9, a container body having a plurality of assembled parts, a base frame 1', at least one cover part 22' attached to the base frame part 1', said cover part including a plurality of side parts 23', 44, said side parts connected to one another at an angle to form a substantially U-shaped cover part 22' having an open end, the base frame part having an upstanding side part/corner stays 28, said upstanding side part located in said U-shaped cover part open end completing said cover part, said base frame part 1' and said upstanding side part 28 formed as a unitary assembly, said base frame part

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and said upstanding side part unitary assembly formed from a molded plastic material and said cover part formed from a corrosion-resistant material, said base frame part including a filter floor part 4(col. 3, lines 53-58); wherein the cover part is attached externally to said at least two upstanding corner stays of the base frame.

6. Claims 10-11, 15, 18, 20, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by USP 5,368,379 to Wrangberth.

Wrangberth discloses a washing container for a dishwashing machine comprising all the elements recited in the above listed claims including, such as shown in Figs 1-2, a container body including a plurality of assembled parts; a base frame part 10, said base frame part having a floor part 19 and at least two upstanding corner stays 26; and at least one cover part 11 attached to said base frame part, said cover part 11 including a plurality of side parts, said side parts connected to one another at an angle to form a substantially U-shaped periphery of said cover part, said substantially U-shaped periphery of said cover part having an open end and a closed end opposite said open end, and said cover part being attached to said base frame part with its U-shaped periphery mounted on said floor part 19 of said base frame part, such as shown in Fig 2, and said cover part 11 being attached at a respective one of its open end and its closed end to said at least two upstanding corner stays; wherein said cover part 11 is attached internally, Fig 2, to said at least two upstanding corner stays of said base frame part.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 16, 17, and 24 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Premoli et al.

Premoli et al discloses all the elements as discussed above except for (1) claim 16, the "peripherally closed rectangle cover part is formed from two substantially L-shaped side parts", (2) claims 17 and 24, the upstanding side part including "additional retention functional elements, including at least one receptacle retention element.

In regard to the limitation in claim 16, Premoli et al discloses the claimed invention except for the cover part being formed from two substantially L-shaped side parts, instead of one U-shaped side part. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the cover part being formed from two substantially L-shaped side parts, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

In regard to the limitation in claim 17, although Premoli et al does not clearly teach the limitation recited therein of the upstanding side part 28 having at least one receptacle retention element, it would have been obvious and well known in the art to provide the upstanding side part 28 of Premoli et al with at least one receptacle retention element for holding cleaning agent.

10. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Premoli et al in view of USP 3,658,075 to Jacobs.

Premoli et al discloses all the elements as discussed above except for at least one of said side parts having a heat exchanger integrated therein.

Jacobs teaches the idea of providing a heat exchanger 60 integrated within a dishwashing machine container for the purpose of improving condensation means. Therefore, it would have been obvious to modify the structure of Premoli et al by providing at least one of said side parts with a heat exchanger integrated therein for the purpose of improving condensation means, as taught by Jacobs, since both teach alternate conventional dishwasher structure, used for the same intended purpose, thereby providing structure as claimed.

Response to Arguments

11. Applicant's arguments filed 8/22/2005 have been fully considered but they are not persuasive. In response to applicant's arguments on page 11 of the cover part of Premoli is a unitary monopiece, not a plurality of parts connected to one another at an angle to form the cover part, the examiner takes the position that the claimed language fails to provide adequate structural limitations in order to distinguish applicant's

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invention from the prior art of record. Further, even one to assume that the cover part of Premoli is a unitary monopiece, it still meets the claimed language of the side parts connected to one another at an angle to form the cover part.

12. In response to applicant's argument that Jacobs fails to teach or disclose a cover part attached to the base frame part, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh V. Tran whose telephone number is (571) 272-6868. The examiner can normally be reached on Monday-Thursday, and alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HVT *HVT*
November 13, 2005

LANNA MAI
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